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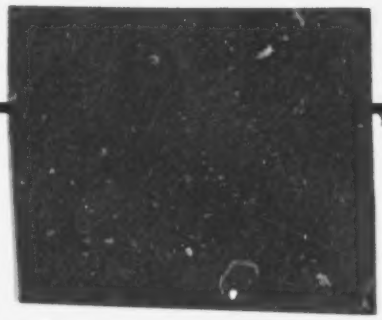

COMMISSION ON CRIME PREVENTION
AND CRIMINAL JUSTICE
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USE AND APPLICATION OF UNITED NATIONS STANDARDS AND NORMS IN CRIME PREVENTION AND CRIMINAL JUSTICE

Use and Application of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

Note by the Secretary-General

Summary

The present note provides an overview of recent developments related to the use and application of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, in particular with regard to the implementation of the mandates contained in Economic and Social Council resolution 1996/14.

1. On 29 November 1985, a milestone in the recognition of the rights of victims of crime and abuse of power was set with the adoption by the General Assembly of its resolution 40/34 and the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power annexed thereto. The text of the Declaration had been approved by consensus by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Milan, Italy, from 26 August to 6 September 1985. The Declaration defines the notion of victims and specifies their right to have access to justice and fair treatment, assistance and compensation or restitution.

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2. The Economic and Social Council, in its resolutions 1986/10, 1989/57 and 1990/22 stressed the need for the effective implementation of the Declaration, with the cooperation of Governments, intergovernmental organizations and other parties concerned. In its resolution 1990/22, it requested the Secretary-General, together with all the entities of the United Nations system and other appropriate organizations, *inter alia*, to undertake and coordinate the necessary action to prevent and curtail severe victimization where national means of recourse were insufficient and to continue to devote attention to policy and research on the situation of victims of crime and abuse of power.

3. In order to foster the implementation of the Declaration, an Expert Group Meeting on Victims of Crime and Abuse of Power in the International Setting was held at Vienna, from 18 to 22 December 1995. It considered the main elements to be included in a draft manual on the use and application of the Declaration, and elaborated an integrated approach as well as a concerted plan of action. The Secretary-General transmitted to the Commission on Crime Prevention and Criminal Justice, at its fifth session, the recommendations of the Expert Group Meeting (E/CN.15/1996/16/Add.5), as well as the report of the meeting containing a summary of its deliberations (E/CN.15/1996/CRP.1).

4. Drawing on the deliberations of the Expert Group Meeting and its recommendations, the Commission at its fifth session, recommended to the Council the adoption of a draft resolution entitled "Use and Application of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power", which subsequently became Council resolution 1996/14.

5. In that resolution, the Council recognized the desirability of preparing a draft manual or draft manuals on the use and application of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. It recommended that this work should be undertaken, taking into account the different legal systems and practices of each State, by expert group meetings to be convened with extrabudgetary funds in cooperation with the institutes comprising the United Nations Crime Prevention and Criminal Justice Programme network, the World Society of Victimology and other entities, and with the support of the Secretary-General.

6. Accordingly, an Expert Group Meeting on Victims of Crime and Abuse of Power in the International Setting, hosted by the Office for Victims of Crime of the Department of Justice of the United States of America, was held at Tulsa, Oklahoma, from 10 to 12 August 1996. The Expert Group Meeting prepared the first version of the draft "International victim assistance training manual on the use and application of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power".

7. The draft text outlines the main elements for the provision of assistance to victims, including: (a) the development of effective victim service programmes focusing on the impact of victimization, crisis response and intervention, counselling and advocacy, participation in the justice system, victim compensation and restitution; (b) the responsibilities of professionals and volunteers to victims, for example, police officers, prosecutors and medical professionals; (c) the integration of victim needs in national law, policy and planning, and the formulation of technical assistance requirements and projects; and (d) international cooperation to reduce victimization and assist victims.

8. During an informal meeting of some of the experts, organized on the occasion of the annual membership conference of the International Scientific and Professional Advisory Council, held at Courmayeur, Italy, from 2 to 3 October 1996, there was agreement that it would be opportune to prepare, for the consideration of the Commission, both a short version of the draft text as a manual and a longer version as a handbook on the use and application of the Declaration.

9. The short version of the draft text would be specifically geared to draw the attention of policy makers, practitioners, concerned organizations and individuals to the text of the Declaration, so as to foster its application through the development of policies. The structure of the short version would follow the structure

of the Declaration itself. In pursuance of the various sections of the Declaration, suggestions would be made for action that has led to improvements in victim assistance in different jurisdictions, in accordance with the specific legal, cultural and political circumstances.

10. In order to elaborate the final text of the manual and to further develop the handbook, an Expert Group Meeting on Victims of Crime and Abuse of Power in the International Setting was organized by the Ministry of Justice of the Netherlands at The Hague from 5 to 7 March 1997.

11. The main purpose of both the manual and the handbook is to enable countries to establish programmes that provide emotional and financial support and effectively intervene on behalf of victims in the context of criminal justice and social institutions. They are being designed as guides for implementing victim service programmes and for developing victim-sensitive policies, procedures and protocols, not only for criminal justice agencies that are in contact with victims, such as the police, prosecutors and social workers, but also for the community and victims themselves.

12. As recommended by the Council in its resolution 1996/14, the expert groups have undertaken extensive work to explore the feasibility of establishing a database on promising practices and legislation on victim-related issues, which could constitute a supplement to the draft manual.

13. The proposed database would be a central point of access to victim-related issues, and could entail either a database in a broad sense - a repository of full-text electronic documents - or a database in a narrow technical sense - an electronic catalogue (a "relational database").

14. The United Nations Crime and Justice Information Network and the United Nations On-line Crime and Justice Clearinghouse would serve as a repository for the proposed database. The full participation of the United Nations Crime Prevention and Criminal Justice Programme network, as a partner and co-developer of the database, would thus be ensured.

15. Pursuant to Council resolution 1996/14, paragraph 1, the views of Member States on the manual have been sought on the basis of the draft outline considered by the Commission at its fifth session (E/CN.15/1996/16/Add.5, annex V). As of 31 January 1997, the following States had submitted a statement of their views: Austria, Brazil, Colombia, Estonia, Germany and Japan.

16. Austria stated that it had no objection to the outline of the manual and supported its further elaboration. Brazil agreed in principle with most of the draft outline. It considered, however, that chapters IX and X of section two and chapter V of section three, as currently drafted, could be eliminated, as they reflected a level of sophistication that might be beyond the scope of the manual. Colombia indicated that it was prepared to participate actively in the strengthening of activities that, within the purview of the Commission, would promote the implementation of the Declaration. The initiation of work on the possible preparation of a manual on the subject was therefore regarded as particularly welcome. Colombia was unequivocally committed to observing the Declaration, a commitment reflected in its law 288, of 1996, under which mechanisms for compensating victims of human rights violations were modified, in accordance with the provisions of the different relevant conventions ratified by Colombia. Estonia pointed out that, in particular, the principles of anonymity of victims, respect for the rights of young victims, consent of victims to apply a simplified procedure, institution of criminal proceedings only upon request of the victim and compensation for damages or expenses should be reflected. Germany informed the Secretariat that the main elements covered by the draft manual were in line with the views of its Government. According to the comments received from Japan, due attention should be paid to how to reflect the interests of victims in the criminal justice procedure of each country (also from the viewpoint of imposing appropriate and fair punishment upon the offenders), as referred to in the Declaration, article 6, paragraph (b). The practices reflecting the interests of victims in criminal justice may vary among States, depending on their legal systems and practices. Japan therefore considered it advisable that the draft manual

should note those practices which were considered effective in different States as examples, thus focusing international interest on this matter. Referring to the content of the draft manual, Japan noted that the specific legal system of a State, together with its social and legal background, had to be taken into account when considering the matter of victim assistance.

17. It should be recalled that the Secretary-General also submitted a report on the use and application of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power to the Commission at its fifth session (E/CN.15/1996/16/Add.3). In its resolution 1996/16, the Council urged Governments that had not yet replied to the questionnaires on the standards in crime prevention and criminal justice to submit their replies to the Secretary-General as soon as possible. With regard to the survey on the use and application of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, since the preparation of the above-mentioned report of the Secretary-General, replies have been received from Cook Islands, Costa Rica, Estonia, Guyana, India, Niger, Panama and Portugal, bringing to 52 the total number of States having replied to the survey.

18. The Expert Group Meeting on Victims of Crime and Abuse of Power in the International Setting, held at Vienna in December 1995, adopted the Principles Guaranteeing the Rights and Interests of Victims in the Proceedings of the Proposed International Criminal Court (E/CN.15/1996/16/Add.5), recommending that they should be reflected, as appropriate, in its statute and rules of procedure. The Council, in its resolution 1996/14, noted with appreciation the work and recommendations of the Expert Group Meeting, and requested the Secretary-General to bring to the attention of the Preparatory Committee for the Establishment of an International Criminal Court the potential applicability of the basic principles contained in the Declaration. The Expert Group Meeting also formulated a specific set of recommendations in this connection.

19. Accordingly, the Secretariat conveyed the relevant documents to the Preparatory Committee for the Establishment of an International Criminal Court, where they were widely distributed. The Preparatory Committee met from 11 to 21 February 1997, and will meet again from 4 to 15 August and from 1 to 12 December 1997, and from 16 March to 3 April 1998, in order to complete the drafting of a widely acceptable consolidated text of a convention on the establishment of an international criminal court, in pursuance of General Assembly resolution 51/207.